

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Relay Services And Speech-to-) Docket 98-67
Speech Services for Individuals with Hearing and)
Speech Disabilities)

To: Chief, Consumer and Governmental Affairs Bureau

PETITION FOR WAIVER

Hands On Video Relay Service, Inc. (“Hands On”), by its counsel, petitions for a waiver of certain of the Commission’s rules governing the provision of Video Relay Service (“VRS”). In support, the following is respectfully shown:

Hands On provides VRS, through contract, to two of the major interstate Telecommunications Relay Service (“TRS”) providers, AT&T Corp. (“AT&T”) and MCI. Hands On has been providing VRS since July of 2002 in a developmental mode, and since November of 2002 under contract. Thus, Hands On is directly affected by the Commission’s requirements for VRS.

Currently, certain TRS requirements are waived for VRS through the end of 2003. *See Telecommunications Relay Service*, 17 FCC Rcd 157 (2001) (“*VRS Waiver Order*”). These are: (1) the types of calls that must be handled, *i.e.*, operator assisted calls or calls requiring end user billing (if long distance service is provided free);¹ (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; and (5) provision of pay-per call (900) services. These rules

¹ With respect to international calls, Hands On has been advised informally by the staff that the company may require credit card billing to complete international calls.

are waived until December 31, 2003, approximately three months from now. This petition is being filed to request an extension of the existing waivers applicable to VRS and to request clarification of certain matters which have proven problematic in providing VRS. Hands On requests that the Commission extend the foregoing waivers for a period coincident with the recently extended waivers granted in connection with IP Relay. *See Telecommunications Relay Service*, FCC 03-46 (March 14, 2003) (“*IP Relay Order*”).

Types of calls. Pursuant to existing waiver, VRS providers are not required to handle operator assisted calls and are not required to bill certain types of long distance calls to the end user.² *See VRS Waiver Order*, 17 FCC Rcd at 161. Hands On currently completes long distance calls at no charge to the VRS user. Moreover, incoming calls to be routed to deaf or hard of hearing persons over the Internet come to Hands On via an 800 number at no charge to the calling party. By the very nature of VRS, it is impossible for Hands On to know whether a call coming to it is local. Hands On completes calls via the most affordable method, including Voice Over Internet Protocol (“VOIP”), where appropriate. Hands On also handles 411 information calls for its customers at no charge to them. Therefore deaf and hard of hearing persons receive service comparable to the switched telephone network. Requiring VRS providers such as Hands On to handle all operator assisted calls and to bill long distance calls to its deaf or hard of hearing users will be problematic. VRS providers simply do not have the billing mechanism for these calls, and as the Commission

² FCC Rule Section 64.604(a)(3) requires TRS providers to complete all types of calls.

has acknowledged, using calling card is not a viable alternative. *VRS Waiver Order*, 17 FCC Rcd at 161. Accordingly, the waiver for types of calls should be extended.

In the *recent IP Relay Order*, the Commission granted IP Relay providers a five year waiver of certain requirements with the waivers being contingent on IP Relay providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made and the steps taken to resolve the technical problems that prohibit IP Relay providers from meeting the TRS minimum standards. For administrative convenience, Hand On suggests that the waivers for VRS should run concurrently with the IP Relay waivers, and should be conditioned as well on the provision of similar annual reports of technological progress.

Emergency call handling. The existing VRS emergency call handling waiver waives the requirement that the TRS (VRS) provider automatically and immediately provide the nearest Public Safety Answering Point (“PSAP”) with the caller’s telephone number, including when the caller disconnects prior to being connected to emergency services.³ *VRS Waiver Order*, 17 FCC Rcd at 162. In the *recent IP Relay Order*, the Commission waived this provision for IP Relay for a five year period because the Commission determined that IP Relay providers are unable to provide location information to PSAPs. This is because IP users gain access to TRS via the internet, rather than through a phone, and because the Internet does not provide automatic number identification

³ See FCC Rule Section 64.604(a)(4).

(“ANI”) of the calling party. For the same reasons the Commission should extend the VRS waiver of this requirement.

Like IP Relay, VRS providers do not receive over the Internet the ANI of a deaf or hard of hearing person making a VRS call. This is because, like the situation with IP Relay, the call comes to the VRS provider via the Internet. Accordingly, waiver of the emergency call handling requirement is necessary for the same reasons the Commission waived the requirement for IP Relay.

Hands On further agrees with the Commission’s treatment of the IP Relay waiver and requests that the waiver for VRS run concurrently with the waiver for IP Relay. In addition, Hands On supports the imposition of an annual reporting requirement concerning technological advances which would allow immediate PSAP call routing.⁴ Hands On further supports continuation of the condition on this waiver requiring the VRS provider to make a clear and bold written statement on its website and promotional materials explaining the shortcomings and potential dangers of VRS in contacting a subscriber’s local 911 center.

Speed of answer. TRS requirements mandate that 85 percent of relay calls must be answered within 10 seconds by any method which results in the caller’s call being placed, not put in queue or

⁴ In this connection, Hands On advises that it maintains an extensive engineering staff with the aim to promote and improve the quality of service available to VRS users. One of the matters assigned to its engineering staff is the issue of automatic emergency call routing.

hold. FCC Rule Section 64.604(b)(2). The Commission previously waived this provision for VRS because VRS was a new service with call volumes difficult to forecast and costly staffing. *See VRS Waiver Order*, 17 FCC Rcd at 163. The basis for that waiver continues. Hands On is experiencing significant growth in its VRS traffic. Indeed, traffic has increased by an order of magnitude in less than six months. While VRS is in a start-up mode VRS providers will be playing catch up until demand levels out. During that same period staffing requirements may not be clear and available staffing may not be sufficient to handle all demand for the service during the busy hour. Accordingly, extension of the waiver of the speed of answer requirement is necessary. Hands On does support, however, a requirement of a yearly report which would set forth details concerning speed of answer and describing average wait times so that among other things the Commission may determine if the 85 percent 10 second speed of answer rule should in fact apply to VRS or whether some other speed of answer rule should apply.

Equal Access to Interexchange Carriers. Hands On requests that the Commission continue the waiver of the requirement for equal access to interexchange carriers adopted in the 2001 *Waiver Order* for VRS contingent on providing long distance service at no additional charge to the deaf or hard of hearing consumer. *See VRS Waiver Order*, 17 FCC Rcd at 163-64. Waiver is warranted for several reasons. First, since the deaf to VI portion of a VRS call is carried over the Internet, the VRS provider does not necessarily know the interexchange carrier of choice of the consumer since the consumer's identity may not in fact be known.⁵ Second, choice of carrier is not critical in the VRS context since the deaf or hard of hearing consumer is not paying for call completion. Third,

⁵ There is no requirement for registration of VRS customers and any such requirement would raise privacy concerns.

with VRS still in its infancy, requiring VRS providers to route calls over a host of different interexchange carriers would serve to unnecessarily increase the costs of providing VRS service even if it were possible to charge actual long distance costs to the deaf or hard of hearing customers. Fourth, because a VRS provider may be located in another state from the deaf or hard of hearing consumer, what may be a local call for the deaf or hard of hearing person is likely to be a toll call for the VRS provider. Thus, implementing carrier of choice for VRS is likely to lead to confusion, increased complaints and unnecessary costs, without serving any appreciable public interest objection. For these reasons, the Commission should extend the carrier of choice waiver for VRS.

One additional matter of clarification is needed, however, with respect to toll service. That is in the area of international calling. Hands On requests the Commission to confirm informal staff advice that VRS providers may require credit card billing to complete international calls.⁶ We think this is particularly important given the situation in IP Relay which suggests that there may be some abuse or gaming of the system. While we believe the opportunity for abuse in VRS is limited, there is nevertheless the potential for international callers (i.e., callers located outside the U.S) to use U.S. VRS to complete a call outside the U.S.⁷ Giving VRS providers the right to require credit card billing should serve to prevent such an opportunity for abuse.

900 number services. The *VRS Waiver Order* waived the requirement for handling pay-per-call services, *see* FCC Rule Section 64.604(b)(6) due to the expected low demand for these types of calls and the burden this requirement would impose on startup VRS providers. *VRS Waiver*

⁶ At present Hands On completes international calls at no charge to the consumer as it does domestic long distance calls.

⁷ Hands On has no proof that such abuse is occurring with any regularity.

Order, 17 FCC Rcd at 164. That waiver was recently extended to IP Relay providers at the request of Sprint.. Sprint sought waiver on the ground that 900 service providers require the ANI of the calling party. The ANI obviously cannot be provided in an IP Relay context for the same reason it cannot be provided for emergency call handling. Thus, Sprint argued that unless the TRS provider's ANI is sent to the 900 service provider (resulting in the TRS provider being billed for the call), 900 service cannot be provided. The Commission agreed with Sprint's argument and waived this service requirement, again for a five year period with the same annual reporting requirement as it imposed for the other waivers.

For the same reasons that it granted a waiver for IP Relay, the Commission should extend the waiver for VRS of the requirement for completion of 900 number calls. Like IP Relay providers, VRS providers do not receive the ANI of the calling party. They thus have no way to bill the calling party for 900 number completion. Absorbing 900 number calls would serve unnecessarily to increase the cost of VRS service and subsidize unnecessarily and unfairly users of pay-per-call services.⁸ Accordingly, Hands On requests extension of the waiver of the pay-per-call services requirement.

Request for Clarification. Hands On takes this opportunity to request clarification of an additional related matter. Hands On has experienced certain isolated instances of obscene and harassing calls. Some have been directed at its VIs while others have been directed at called parties. In addition, Hands On has handled certain calls between consenting parties which are of an explicit sexual nature. FCC Rule Section 64.604(a)(2)(ii) mandates that VIs are prohibited from

⁸ At some point it may be possible for VRS providers to complete pay-per-call traffic using credit card billing. However, most pay-per-call services except for adult services are not set up for credit card billing. Moreover, adult service calls raise their own issues as discussed *infra*.

“intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, states, or local law regarding the use of telephone facilities for illegal purposes, must relay all conversations verbatim unless the relay user specifically requests summarization.” 18 U.S.C. Section 1462 makes it a crime to transport over the Internet obscene and indecent material. Additionally, 47 U.S.C. Section 223(a)(1) prohibits making interstate calls which are obscene or indecent with the intent to harass or annoy another person. Hands On fears liability under the foregoing provisions. Moreover, Hands On fears sexual harassment and other claims should it require its VIs to complete such calls.

Hands On requests that the Commission clarify that VRS providers may immediately terminate calls where its VIs are subjected to harassment or indecency. Similarly, Hands On requests clarification that it may terminate calls directed to third parties that appear designed to harass or annoy such parties, either as a result of obscenity or other threatening or annoying conduct. Finally, to protect VRS providers from sexual harassment complaints, with respect to consensual explicit calls, Hands On requests that the Commission confirm that such calls must by law be completed verbatim and the verbatim translation of such calls is a Bona Fide Occupational Qualification for a VRS interpreter.

Respectfully submitted,

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Certificate of Service

I, Funmi Feyide, do hereby certify that copies of the foregoing Petition for Waiver were sent on this 22nd day of September, 2003, via first-class mail, except where noted, postage pre-paid, to the following:

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